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*Attorneys for Plaintiffs CG Technology Development, LLC;
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

DRAFTKINGS, INC.,

Defendant.

Case No.: 2:16-cv-00781-RCJ-VCF

**RULE 26(F) REPORT AND
DISCOVERY PLAN AND PROPOSED
SCHEDULING ORDER FOR RELATED
CASES**

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

FANDUEL, INC.,

Defendant.

Case No.: 2:16-cv-00801-RCJ-VCF

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

888 HOLDINGS, PLC,

Defendant.

Case No.: 2:16-cv-00856-RCJ-VCF

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

BIG FISH GAMES, INC.,

Defendant.

Case No.: 2:16-cv-00857-RCJ-VCF

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

DOUBLE DOWN INTERACTIVE, LLC,

Defendant.

Case No.: 2:16-cv-00858-RCJ-VCF

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

ZYNGA INC.,

Defendant.

Case No.: 2:16-cv-00859-RCJ-VCF

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

BWIN.PARTY DIGITAL
ENTERTAINMENT, PLC, BWIN.PARTY
(USA), INC.; and BWIN.PARTY
ENTERTAINMENT (NJ), LLC,

Defendants.

Case No.: 2:16-cv-00871-RCJ-VCF

1. BACKGROUND

Each of the above-captioned cases is an action for patent infringement. The actions involve at least one overlapping asserted patent. To promote efficiency, the parties conducted a teleconference on November 21, 2016 to discuss the issues addressed in this Report. The parties also conducted a meet and confer during the Pretrial Conference held on December 2, 2016. Below is a list of counsel who participated on behalf of each party during the November 21, 2016, teleconference:

 Plaintiffs¹: Anthony Del Monaco, Scott Allen

¹ Here and throughout this document all three Plaintiff parties are considered to be a single "Plaintiff" party.

☐ DraftKings, Inc.: Jonathan Berschadsky

☐ FanDuel, Inc.: Carrie Bader

☐ 888 Holdings, PLC: Bill Gantz, Cayla Witty

☐ Big Fish Games, Inc.: David Ball, Patrick Connolly

☐ Double Down Interactive, LLC: Justin Wilcox, Brian Matty, Cayla Witty

☐ Zynga Inc.: Timothy Saulsbury

☐ Bwin Defendant²: Evan Rothstein, Adam Yowell

2. **INITIAL CONFERENCE**

The parties reached agreement on proposed limitations on discovery for this case during the meet and confer at the December 2, 2016 Pretrial Conference.

3. **SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED**

Discovery may be needed on all matters within the scope of Rule 26 of the Federal Rules of Civil Procedure, including, but not limited to, (1) the alleged infringement, validity, and enforceability of the asserted patents, (2) the design and operation of the accused products, (3) the financial, marketing, and sales data of the accused products, (4) the alleged conception and reduction to practice of the claimed inventions, (5) the prosecution of the asserted patents, (6) prior art to the asserted patents, (7) the state of the art at the time of the inventions claimed in the asserted patents, (8) licensing of the asserted patents, (9) Plaintiff's pre-suit investigation of Defendants' alleged infringement, (10) any embodying systems of Plaintiff or their licensees, (11) marking of any embodying products by Plaintiff and their licensees, (12) Plaintiff's standing to bring suit on the asserted patents, and (13) the relationship of Plaintiff to one another.³

4. **PROTECTIVE ORDER**

Pursuant to Local Patent Rule 1-4, the parties will serve a proposed Stipulated Protective Order as follows:

² The three Bwin Defendants are collectively referred to as Bwin "Defendant."

³ To the extent such discovery is not privileged or protected by some other doctrine.

Event	Deadline
Submit Joint Stipulated Protective Order.	December 20, 2016.

5. INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(C) and Local Rule 26-1, the parties will serve initial disclosures (or amended initial disclosures, as needed) as follows:

Event	Deadline
Parties serve initial disclosures and amended initial disclosures, as needed.	December 20, 2016.

6. PHASED DISCOVERY CUT-OFF DATES

The parties propose a phased discovery plan that allows these seven related cases to progress in a timely and logical manner.

Event	Deadline
Fact discovery cut-off.	120 days after entry of the Court's Claim Construction Order, but not later than November 15, 2017, unless extended by the Court.
Expert discovery cut-off.	60 days after service of rebuttal expert reports.

Pursuant to Local Patent Rule 1-23, the parties agree that any extension of the discovery deadlines will not be allowed without a showing of good cause for the extension. All motions or stipulations to extend discovery must be received by the Court at least 21 days before the expiration of the subject deadline. A request made after this date will not be granted unless the movant demonstrates that the failure to act was the result of excusable neglect. The motion or stipulation must include:

(a) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;

(b) A specific description of the discovery that remains to be completed;

(c) The reasons why the remaining discovery was not completed within the time limit of the existing discovery deadline; and

(d) A proposed schedule for the completion of all remaining discovery.

7. ISSUES REGARDING ELECTRONICALLY STORED INFORMATION

Pursuant to Federal Rule of Civil Procedure 26(f)(3)(C), the parties' Agreement Regarding the Electronic Production of Documents, which addresses the preservation and production of electronically stored information, is attached as **Exhibit A**.

Pursuant to Local Rule 26-1(b)(9), the parties intend to present evidence in electronic format to jurors for purposes of jury deliberations.

8. CHANGES TO LIMITATIONS ON DISCOVERY

Party and judicial resources can be saved by the following: (1) the parties will coordinate depositions such that depositions of a single deponent are scheduled in one location during one period of time (such as by noticing 30(b)(1) and 30(b)(6) depositions together and having the Defendants coordinate depositions of Plaintiff's witnesses and inventors of the asserted patents in these cases); (2) Defendants may collectively serve no more than thirty (30) common interrogatories on the Plaintiff; (3) each Defendant may serve no more than ten (10) individual interrogatories on the Plaintiff; (4) the number of requests for admission to forty (40) per case, exclusive of requests directed solely to authentication, foundation, and/or admissibility of documents or other evidence, which are unlimited in number; and (5) limiting discovery requests by agreeing not to capture and disclose email communications, unless extenuating circumstances present themselves as discussed in more detail below. Unless otherwise stated herein, the default discovery limits of the Federal Rules of Civil Procedure shall apply. The parties will work on a separate electronic discovery agreement that contains the necessary details for searching of electronic documents and agree that one universal set of search terms will be applied to Plaintiff's electronic documents.

Plaintiff shall have up to fifty (50) hours deposition testimony of fact witnesses, including Fed. R. Civ. P. 30(b)(6) depositions, but not including third-party witnesses, per Defendant.

Defendants shall coordinate their depositions and shall collectively be allowed to have up to eighty (80) hours of deposition testimony of fact witnesses, including Plaintiff's employed inventors and Fed. R. Civ. P. 30(b)(6) depositions, but not including third-party witnesses. Each Defendant shall have an additional eleven (11) hours of deposition testimony for their own use. Those eleven (11) hours are separate and in addition to the foregoing eighty (80) cumulative hours. For clarity, if a witness is duly noticed as both a Fed. R. Civ. P. 30(b)(6) witness and a Fed. R. Civ. P. 30(b)(1) witness, that deposition shall count as both a Fed. R. Civ. P. 30(b)(6) deposition and a Fed. R. Civ. P. 30(b)(1) deposition, and any such depositions will be conducted concurrently and/or consecutively, unless the parties otherwise agree in writing. The parties agree to negotiate, in good faith, the amount of deposition time for each expert. Unless the parties agree otherwise, the parties will abide by Fed. R. Civ. P. 30(d)(1) regarding the duration of a deposition as limited to seven (7) hours. Additional deposition discovery shall only be available by agreement of all parties to which the discovery relates or motion to the Court for good cause shown. Good cause does not include the failure to exercise reasonable efficiency in conducting depositions.

The parties agree that (1) email and other electronic messaging discovery is overly burdensome and not proportional to the needs of the cases, (2) the structure, function, and operation of the accused products are best determined by reference to the accused product itself and its underlying code, and (3) email will be of little to no value. Thus, the parties agree that no email and/or other electronic messaging production discovery is necessary. Email attachments maintained separately as independent documents or files may not be withheld from discovery on the basis of having been transmitted or obtained by email. The parties agree that, in the event email is sought, it must be for good cause only, and the request for email shall be as specific and narrow as possible. The parties further agree that the party seeking discovery of such electronic mail shall be required to bear the reasonable fees and cost of the search for, collection, review and production of such materials. The parties shall meet and confer as to good cause on this issue.

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9. AMENDMENTS TO THE PLEADINGS

Pursuant to Local Rule 26-1(b)(2), the parties propose that the date for filing motions to amend the pleadings or to add parties shall be 30 days after the entry of the Court's Claim Construction Order, but no later than November 15, 2017.

10. CONTENTIONS

The parties propose the following dates for the exchange of initial contentions called for by Local Patent Rules 1-6 through 1-10. These procedures ensure that Defendants file consolidated invalidity contentions and ensure that the cases progress logically, but without undue delay.

Event	Deadline
Plaintiff to serve disclosure of asserted claims and infringement contentions (or amended infringement contentions) and accompanying documents, as needed, pursuant to Local Patent Rule 1-6 and 1-7.	14 days after the entry of a Scheduling Order by the Court.
Defendants to serve noninfringement and consolidated invalidity contentions and accompanying documents, pursuant to Local Patent Rule 1-8 and 1-9.	75 days later.
Plaintiff to serve responses to Defendants' noninfringement and consolidated invalidity contentions, pursuant to Local Patent Rule 1-10	75 days later.

11. LIMITATION OF ASSERTED CLAIMS AND PRIOR ART REFERENCES

Not later than sixty (60) days after an accused infringer produces documents sufficient to show the operation of the accused instrumentalities, Plaintiff shall serve a Preliminary Election of Asserted Claims, which shall assert no more than ten claims from each patent and not more than a total of forty (40) claims. Similarly, sixty (60) days after Plaintiff serves their Preliminary Election of Asserted Claims, Defendants will jointly serve their own Joint Preliminary Election of Prior Art, which shall assert no more than ten (10) pieces of § 102 prior art and no more than fifteen (15) pieces of § 103 prior art (inclusive of the § 102 prior art) per asserted patent.

Not later than sixty (60) days after the Court issues its Claim Construction Order, Plaintiff shall serve a Final Election of Asserted Claims, which shall identify no more than five (5) asserted claims per patent from among the ten (10) previously identified claims and no more than a total of twenty (20) claims. Similarly, thirty (30) days after Plaintiff serves their Final Election of Asserted Claims, Defendants will jointly serve their own Joint Final Election of Prior Art, which shall assert no more than five (5) pieces of § 102 prior art and no more than ten (10) pieces of § 103 prior art (inclusive of the § 102 prior art) per asserted patent. A party may exceed the limitations pursuant to the foregoing paragraphs upon a showing of good cause, such as if Plaintiff asserts different claims against different Defendants for a particular patent. The parties agree to meet in good faith to discuss and try to resolve any request to exceed the foregoing limitations before involving the Court.

12. CLAIM CONSTRUCTION

The parties propose the following dates for exchange of claim construction materials called for by Local Patent Rules 1-11 through 1-16. Defendants have agreed to adopt a joint claim construction position and file a joint brief. The parties agree to meet and confer in good faith to discuss page limits of the claim construction briefs.

Event	Deadline
Exchange proposed terms for construction, pursuant to Local Patent Rule 1-13.	28 days after the date for Plaintiffs to serve responses to Defendants' noninfringement and consolidated invalidity contentions, pursuant to Local Patent Rule 1-10.
Exchange preliminary claim constructions and supporting extrinsic evidence, pursuant to Local Patent Rule 1-14.	28 days later.
Exchange joint claim construction and prehearing brief, pursuant to Local Patent Rule 1-15.	28 days later.

Opening claim construction brief from Plaintiffs, pursuant to Local Patent Rule 1-16.

21 days later.

Responsive joint claim construction brief from Defendants, pursuant to Local Patent Rule 1-16.

60 days later.

Reply claim construction brief from Plaintiff, pursuant to Local Patent Rule 1-16.

28 days later.

Claim construction hearing.

At the discretion of the Court.

13. EXPERT DISCLOSURES

The parties propose the following dates for the exchange of expert disclosures, pursuant to Local Rule 26-1(b)(3).

Event	Deadline
Opening expert reports on issues for which the serving party has the burden of proof.	120 days after Claim Construction Order issues.
Rebuttal expert reports.	60 days after service of opening expert reports.
Expert discovery cut-off.	60 days after service of rebuttal expert reports.

14. DISPOSITIVE MOTIONS AND PROPOSED PRETRIAL ORDER

Pursuant to Local Rules 26-1(b)(4)–(5) and Local Patent Rule 1-23, the parties propose that dispositive motions must be filed as follows. These dates ensure that the cases progress without undue delay and correspond with the phrased approach to the fact and expert discovery timeframes set forth above.

Event	Deadline
File dispositive motions.	60 days after the close of expert discovery.

Pursuant to Local Patent Rule 1-23, the parties also agree that, if no dispositive motions will be filed within the time specified in this order, then the parties must file a written, joint proposed pretrial order within 30 days of the dispositive motion cutoff. If dispositive motions are filed, then the parties for each case must file a written, joint proposed pretrial order within 30 days of the date the Court enters a ruling on the dispositive motions.

15. ALTERNATIVE DISPUTE RESOLUTION AND SETTLEMENT CONFERENCES

Pursuant to Local Rule 26-1(b)(8), the parties, by and through their respective undersigned counsel, certify that they considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial Program (General Order 2013-01). The parties agree not to consent to trial by a magistrate judge.

Pursuant to Local Patent Rule 1-19, the parties propose the following dates for the settlement conferences:

Event	Deadline
Three dates for the pre-claim construction settlement conference.	Within 30 days after of service of Defendants' invalidity contentions, the parties will file a joint stipulation with three dates when the parties are available for the pre-claim construction settlement conference.
Three dates for the post-claim construction settlement conference.	Once the Claim Construction Order is entered, the parties will file a joint stipulation with three dates within 30 days of the Order when the parties are available.
Pre-trial settlement conference.	Once the Pretrial Order is filed, the parties will file a joint stipulation with three dates the parties are available.

16. INTERIM STATUS REPORT

Pursuant to Local Rule 26-3, the parties shall submit an interim status report 60 days before the fact discovery cut-off, which is set forth above.

17. **ADDITIONAL PROVISIONS**

a. Motions in Limine

The parties propose that any motions *in limine* must be filed no later than 30 days prior to trial. The parties further propose that any oppositions to motions *in limine* must be filed within 14 days after the motions *in limine* are filed. If a party seeks leave to file a reply, then such request for leave, and the requested reply, will be served within 7 days after the opposition was filed.

b. Privilege Log

A party that asserts attorney-client privilege, attorney work product protection, or any other privilege, immunity, or protection to withhold or redact any information or document shall supply a privilege log. Any documents withheld on the basis of privilege, work product, or other applicable immunity must be recorded on a privilege log, which shall be served within thirty (30) days of that document being withheld from a production. Notwithstanding the forgoing, documents created after the filing date of each case's Original Complaint do not need to be listed on the privilege log.

c. Service by Email

The parties have agreed that, to the extent possible in light of the volume of the submission, all court filings, to the extent not served through ECF (*e.g.*, filings under seal), will be served via e-mail on all counsel who have entered an appearance on behalf of the party to be served, and such service shall constitute proper service under Fed. R. Civ. P. 5(b)(2)(E). The parties have further agreed that each party may serve discovery, in lieu of other service methods, by e-mail under Fed. R. Civ. P. 5(b)(2)(E) on all counsel who have entered an appearance on behalf of the party to be served.

Discovery requests and discovery responses shall be served in searchable .PDF format by electronic service and, in addition to the .PDF format, the parties shall exchange copies of discovery requests in Microsoft Word format.

If transmission of voluminous materials as an email attachment is impractical, those materials shall be sent via an FTP service (or similar secure online file transfer service) or by

overnight delivery. If service is by overnight delivery, the serving party must use a service having the ability to “track” delivery and verify receipt.

Service by email shall take place at or before 9:00 p.m. East Coast Time; anything served after that time shall be deemed served the next day.

d. Third-Party Subpoenas

The parties have agreed that any party that serves a subpoena upon a third-party will simultaneously serve a copy upon each other party. Any party that receives documents or written correspondence from a third-party pursuant to a subpoena will promptly produce those documents and/or written correspondence to each other party. Each party must produce copies of documents it receives from a third-party within five (5) business days. Where such reproduction is not possible within five (5) business days, the party who received the documents will provide notice to the other party on or before the fifth (5th) business day and work in good faith to resolve the issue.

DATED this 9th day of December, 2016.

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Attorneys for Defendant DraftKings, Inc.

ORDER

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATED: December 21, 2016

EXHIBIT A

AGREEMENT REGARDING THE ELECTRONIC PRODUCTION OF DOCUMENTS

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

CG TECHNOLOGY DEVELOPMENT, LLC,
INTERACTIVE GAMES LIMITED, and
INTERACTIVE GAMES LLC,

Plaintiffs,

vs.

Defendant.

Case No.: 2:16-cv-_____

EXHIBIT A TO RULE 26(f) REPORT

**AGREEMENT REGARDING THE
ELECTRONIC PRODUCTION OF
DOCUMENTS**

All documents produced in this case shall be exchanged electronically. To the extent possible, all documents shall be produced as single-page 300 DPI images, in either TIF or JPEG format, where color documents are produced in color, and black-and-white documents are

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produced in black-and-white CCITT Group IV (TIF) for black and white images; JPEG compression, medium quality JPEG files (JPG) for color images. Each image file shall be named with a unique name matching the Bates number (image key) labeled on the corresponding page. An image load file in Opticon (OPT) format shall be provided, along with document-level text files, extracted text or OCR for image-only and redacted image files. Any redacted material should be clearly labeled to show the redactions. To the extent possible, the parties will avoid production of duplicates of documents, and identify original custodians of duplicates within the "CUSTODIANS" field of the load file for the produced documents.

The parties shall provide in native format with all metadata intact (and not as a .txt file) all files created by Excel or other spreadsheet programs and any other file types that the parties agree reasonably require viewing in their native format for a full understanding of their content and meaning. Word documents, PDF documents, and PowerPoint documents need not be produced in native format, unless the native document has comments, track changes, annotations, or other substantive metadata that will be destroyed, omitted, or otherwise not reasonably reviewable by production in non-native form. To produce a document natively, the following shall be provided: (i) the native document, named with a unique Bates number; (ii) a TIF image also named with that unique Bates number, the image containing a statement that the document bearing that Bates number was produced natively; and (iii) when applicable, the extracted text in a document-level text file. Image-rendered versions of the native files need not be produced. The parties shall confer in good faith regarding the production of any additional files or file types that the receiving party reasonably requests to have produced in native format.

Where available, the parties shall produce extracted metadata for each document in the form of a .DAT file with Concordance delimiters, including the following fields:

- 1 PRODBEG Bates label of the first page of the document
- 2 PRODEND Bates label of the last page of the document
- 3 PRODBEGATT Bates label of the first page of a family of documents
- 4 PRODENDATT Bates label of the last page of a family of documents

- 1 5 TITLE Title of a non-E-mail document (Microsoft Title field)
- 2 6 DATE CREATED Operating system Date and Time Created for attachments and standalone
- 3 electronic files (edocs)
- 4 7 DATE LAST MODIFIED Operating system Date and time Last Modified for attachments and
- 5 edocs
- 6 8 FILE AUTHOR Author of attachment or edoc
- 7 9 EMAIL SENT DATE Date and time the E-mail message was sent
- 8 10 EMAIL FROM Author of E-mail
- 9 11 EMAIL TO Recipient(s) of E-mail
- 10 12 EMAIL CC Recipient(s) of the carbon copies of the email message
- 11 13 EMAIL BCC Recipient(s) of the blind carbon copies of the email message
- 12 14 EMAIL SUBJECT Subject of E-mail
- 13 15 FILEPATH Original file path of the native file
- 14 16 MD5hash Document's unique MD5 hash value
- 15 17 CONVERSATION INDEX Microsoft conversation index number
- 16 18 CUSTODIANS All Custodians of a document
- 17 19 ATTACHMENT NAMES File names of email attachments
- 18 20 PARENTID Document identification for parent document
- 19 21 FILENAME Name of native file
- 20 22 FILE EXTENSION Native document extension
- 21 23 NATIVE_LINK The path to any document produced in native form
- 22 24 TEXT_LINK The path to any document-level text file containing the extracted text from the
- 23 body of the document or OCR

24 Where possible, document text and metadata shall be produced using an encoding that
25 maintains the original display of the characters, *e.g.*, UTF-8 encoding for CHK characters.
26 Documents originally maintained in paper files shall be produced as single-page image files, with
27 corresponding Concordance (DAT) and Opticon (OPT) load files, along with document-level OCR
28

1 (TXT) files following the guidelines outlined above.

2 The circumstances of this case do not warrant the preservation, review, or production of
3 electronically stored information ("ESI") that is not reasonably accessible because it is unlikely
4 that significant relevant information would be located in those sources that is not otherwise
5 available in reasonably accessible sources. Moreover, that remote possibility is substantially
6 outweighed by the burden and cost of preservation, review, and production of ESI from these
7 sources. Accordingly, parties agree that the following ESI is hereby deemed not reasonably
8 accessible and need not be preserved or searched: materials retained in tape, floppy disk, optical
9 disk, or similar formats primarily for backup or disaster recovery purposes, as well as archives
10 stored on computer servers, external hard drives, notebooks, or personal computer hard drives that
11 are created for disaster recovery purposes and not used as reference materials in the ordinary
12 course of a party's operations; voicemail and other audio (such as .wav files); video; instant
13 messaging; legacy data; residual, fragmented, damaged, permanently deleted, or unallocated data;
14 and data located on a handheld PDA device such as a Blackberry or iPhone. This agreement
15 regarding ESI does not apply to third-party productions.

16 The provisions herein do not apply to the production of source code, which will be
17 controlled by the provisions of the parties' Stipulated Protective Order. The recitation of certain
18 document production programs and technology herein is not intended to limit the parties, or
19 prevent the use of equivalent programs and technology.

20 The provisions herein are subject to modification pursuant to the joint written agreement of
21 the parties, or by Order of the Court based on a showing of good cause.